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11 Attorneys for Plaintiff  
12 United States of America

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15 IN THE UNITED STATES DISTRICT COURT  
16  
17 EASTERN DISTRICT OF CALIFORNIA

18 UNITED STATES OF AMERICA,

19 Plaintiff,

20 v.

21 JULIO CHAVEZ,  
22 DENNISE CASTRO,  
23 DESTANEY WALKER, and  
24 BRYAN SAHAGUN, et. al.,

25 Defendants.

26 CASE NO. 1:20-CR-00062 NONE-SKO

27 STIPULATION TO CONTINUE STATUS  
28 CONFERENCE AND ORDER

Date: April 21, 2021  
Time: 1:00 p.m.  
Honorable Sheila K. Oberto

18 The United States of America, by and through MCGREGOR W. SCOTT, United States  
19 Attorney, and KATHLEEN A. SERVATIUS, Assistant United States Attorneys, and the defendants, by  
20 and through their respective attorneys of record, hereby stipulate to continue their status conference  
21 from April 21, 2021 until July 21, 2021 at 1:00 p.m.

22 On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the  
23 Eastern District of California until further notice. This General Order was entered to address public  
24 health concerns related to COVID-19. Further, pursuant to General Order 611 and 620, this Court's  
25 declaration of judicial emergency under 18 U.S.C. § 3174, and the Ninth Circuit Judicial Council's  
26 Order of April 16, 2020 continuing this Court's judicial emergency, this Court has allowed district  
27 judges to continue all criminal matters to a date after May 1, 2021.<sup>1</sup>

28  
1 A judge "may order case-by-case exceptions" at the discretion of that judge "or upon the  
STIPULATION TO CONTINUE STATUS CONFERENCE

1       Although the General Orders and declaration of emergency address the district-wide health  
 2 concern, the Supreme Court has emphasized that the Speedy Trial Act's end-of-justice provision  
 3 "counteract[s] substantive openendedness with procedural strictness," "demand[ing] on-the-record  
 4 findings" in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-  
 5 record findings, there can be no exclusion under" § 3161(h)(7)(A). *Id.* at 507. And moreover, any such  
 6 failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153  
 7 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit  
 8 findings on the record "either orally or in writing").

9       Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
 10 and inexcusable—General Orders 611, 612, 617, 618, and 620 and the subsequent declaration of judicial  
 11 emergency require specific supplementation. Ends-of-justice continuances are excludable only if "the  
 12 judge granted such continuance on the basis of his findings that the ends of justice served by taking such  
 13 action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C. §  
 14 3161(h)(7)(A). Moreover, no such period is excludable unless "the court sets forth, in the record of the  
 15 case, either orally or in writing, its reason or finding that the ends of justice served by the granting of  
 16 such continuance outweigh the best interests of the public and the defendant in a speedy trial." *Id.*

17       The General Orders and declaration of judicial emergency exclude delay in the "ends of justice."  
 18 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address  
 19 continuances stemming from pandemics, natural disasters, or other emergencies, this Court has  
 20 discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-  
 21 week ends-of-justice continuance following Mt. St. Helens' eruption. *Furlow v. United States*, 644 F.2d  
 22 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed.  
 23 *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to  
 24 exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency).  
 25 The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated  
 26 by the statutory rules.

27  
 28 request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order  
 will impact court staff and operations." General Order 618, ¶ 7 (E.D. Cal. May 13, 2020).

1       In light of the societal context created by the foregoing, this Court should consider the following  
2 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-  
3 justice exception, § 3161(h)(7) (Local Code T4).<sup>2</sup> If continued, this Court should designate a new date  
4 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any  
5 pretrial continuance must be “specifically limited in time”).

6       The parties request that time be excluded between April 21, 2021 and July 21, 2021 p.m. for the  
7 following reasons: the defendants need additional time to review the discovery, consult with their  
8 clients, and conduct further investigation. The case involves several seizures, approximately 500 pages  
9 of discovery, and discovery in the form of several gigabytes. Supplemental discovery consisting of  
10 digital phone downloads was provided in the last six months. . The proposed status conference date  
11 represents the earliest date that all counsel are available thereafter, taking into account counsels’  
12 schedules, defense counsels’ commitments to other clients, and the need for preparation in the case and  
13 further investigation. In addition, the public health concerns cited by General Order 611, 612, and 617  
14 and presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in this  
15 case because counsel or other relevant individuals have been encouraged to telework and minimize  
16 personal contact to the greatest extent possible. It will be difficult to avoid personal contact should the  
17 hearing proceed.

18       The parties further believe that time should be excluded, in that failure to grant the requested  
19 case schedule would unreasonably deny the defendants continuity of counsel, and unreasonably deny  
20 both the defendants and the government the reasonable time necessary for effective preparation, taking  
21 into account the parties’ due diligence in prosecuting this case. 18 U.S.C. Section 3161(h)(7)(B)(iv).  
22 Based on the above-stated findings, the ends of justice served by the schedule as requested outweigh the  
23 interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial  
24 Act. Therefore, the parties request that the Court exclude the time until the new status conference date  
25 from calculations under the Speedy Trial Act.

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<sup>2</sup> The parties note that General Order 612 acknowledges that a district judge may make  
27 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.  
28 Cal. March 18, 2020).

1 Dated: April 14, 2021

PHILLIP A. TALBERT  
Acting United States Attorney

6 Dated: April 14, 2021

/s/ Kathleen A. Servatius  
KATHLEEN A. SERVATIUS  
Assistant United States Attorney

8 Dated: April 14, 2021

/s/ Marc Days  
Attorney for Defendant Julio Chavez

10 Dated: April 14, 2021

/s/ Kevin P. Rooney  
Attorney for Defendant Dennise Castro

9

11 Dated: April 14, 2021

/s/ Anthony P. Capozzi  
Attorney for Defendant Destaney Walker

12 Dated: April 14, 2021

/s/ Monica Bermudez  
Attorney for Defendant Bryan Sahagun

14 **ORDER**

15 IT IS HEREBY ORDERED that the status conference in this case, except as to defendant  
16 CHAVEZ, be continued from April 21, 2021, until July 21, 2021 at 1:00 p.m.

17 IT IS FURTHER ORDERED THAT the ends of justice served by the schedule set forth herein as  
18 requested outweigh the interest of the public and the defendants in a trial within the original date  
19 prescribed by the Speedy Trial Act for the reasons stated in the parties' stipulation. For the purpose of  
20 computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must  
21 commence, the time period of April 21, 2021, until July 21, 2021, inclusive, is deemed excludable  
22 pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) because it results from a continuance granted by the Court  
23 at the parties' request on the basis of the Court's finding that the ends of justice served by taking such  
24 action outweigh the best interest of the public and the defendant in a speedy trial.

25 IT IS SO ORDERED.

26 Dated: April 16, 2021

/s/ Sheila K. Oberlo

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28 UNITED STATES MAGISTRATE JUDGE